

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF JUNE

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION NO : 20822 of 1993

Between:

- 1 Smt. M. Jhansi Vijaya Laxmi W/o. Govinda Rajacharyulu,
R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.
- 2 Smt. V. Shantha W/o. V.V. Ramavatharam
R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.
- 3 Smt. C. Krishna Kumari W/o. Raghu Rama Chari
R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.
- 4 Smt. C. Aruna W/o. Prabhakar Rao
R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.
- 5 Miss C. Usha D/o. Late Dr. P.C. V.L.Narsimha Chary
R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.
- 6 Sri P.C.M. Narsimha Charyuluy S/o.Late Dr. PCVL Narsimha
Chary, R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.
- 7 Sri C. Mohan S/o. Dr.P.C.V.L. Narsimha Chari
R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.
- 8 Sri C. Madan S/o. Late Dr.P.C.V.L. Narsimha Chari
R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.
- 9 Sri C. Ramesh S/o. Late Dr.P.C.V.L. Narsimha Chari
R/o. H.No. 1-10-120, Ashoknagar, Hyderabad.

..... PETITIONERS

AND

- 1 Municipal Corporation of Hyderabad Rep. by its
Commissioner/Special Officer, Tank Bund, Hyderabad.
- 2 Dist. Collector (Land Acquisition), Municipal Corporation of
Hyderabad, Hyderabad.
- 3 The Director, Urban Community Development, Municipal
Corporation of Hyderabad. Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ more particularly in the nature of writ of mandamus declaring the Proc.No.B/3012/UCD/MCH/93-2214 dated 5.10.1993 issued by the Respondent No.3 as null and void and consequently direct the Respondents to pay the compensation to the petitioners as per the market value with interest for the acquisition of the land admeasuring 3000 square yards in Sy.No.137 of Monje Nampally situated at Narayanaguda, Hyderabad belonged to the petitioners and pass such other order or orders which this Hon'ble Court may deem fit.

Counsel for the Petitioners: Smt. PUSHPINDER KAUR

Counsel for the Respondents 1 and 3: Mr. Ganta Rama Rao, SC for MCH.

Counsel for Respondent No. 2: Government Pleader for Revenue.

The Court made the following Order:

The gravamen of the complaint in the instant writ petition relates to the alleged highhanded action on the part of the respondent-Municipal Corporation of Hyderabad in refusing to pay compensation for the land admeasuring 3000 square yards acquired by the respondent-Municipal Corporation by way of notification issued under Section 3(1) of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 (for short 'the Act'). The notification was published in Gazette No. 40 page 838 of part-I of A.P Gazette dated 7.10.1982 read with G.O Ms. No. 45 Housing dated 8.3.1963 published at page 1153 of Part-I. It is alleged in the affidavit filed in support of the writ petition that "the respondents have neither issued any notice nor paid any compensation to us at the time of initiation of the above said land acquisition proceedings".

It is interesting to note the averments made in the affidavit filed in support of the writ petition which are to the following effect:

"I submit that the petitioners made several continuous representations to the respondents requesting them to pay the compensation as per the market value with interest for the acquisition of their land to an extent of 3000 sq.yds. in Sy.No.137 situated at Narayanaguda, Hyderabad. To wit representation dated 16.9.1983, legal notice dated 29.7.1992, Last representation dt. Sept, 1993.

I submit that the respondent No. 3 vide proc.No.B/3012/UCD/MCH/93-2214 dt.5.10.93, without paying any compensation, informed the petitioners that he had already given reply dated 24.9.92 to D. Koteswar Rao, Advocate and the same is liable to be declared as arbitrary, illegal, unconstitutional, null and void. Though the petitioners approached D. Koteswar Rao, Advocate, they are not supplied with the alleged copy of the reply dated 24.9.92 given by the respondent No.3".

The petitioners accordingly pray this Court to declare the proceedings dated 5.10.1993 issued by the 3rd respondent as null and void.

The proceedings dated 5.10.1993 are nothing but mere reiteration that a reply to the statutory notice issued under Section 80 of the CPC on behalf of the

petitioners through D. Koteswar Rao, advocate had already been given vide the reply dated 24.9.1992.

The short question that falls for consideration is whether the petitioners are entitled for payment of any compensation for the land alleged to have taken over by the respondent-Municipal Corporation under the provisions of the Act.

In the counter affidavit filed by the respondent-Municipal Corporation, it is explained that the entire land to the extent of 12000 square yards was occupied by the slum dwellers belonging to 253 families and a notification under Section 3(1) of the Act was issued and published in the gazette in the manner referred to hereinabove. Thereafter, the owners of the land Smt. P.C. Seethamma who is the mother of the petitioners and P.C.V.L. Narasimha Chari together entered into compromise with the slum dwellers represented by their association M/s. Gandhi Kuteer Welfare Society wherein it was agreed that 5500 square yards situated on the rear side will be given to the slum dwellers at free of cost for their rehabilitation purpose and in turn the slum dwellers have to vacate the remaining portion in the front side and give the vacant possession to the owners and accordingly they entered into memorandum of compromise and a letter was addressed to the Corporation jointly by the owners as well as the Society agreeing to various terms and conditions in terms of the compromise entered into among them. The Corporation acting upon the said letter and particularly, the consent given by the owners to acquire the land admeasuring 5500 square yards without payment of any compensation initiated further proceedings under the provisions of the Act. It is further stated that no compensation was payable for the reason that the owners themselves have given their consent not to claim any compensation for the land admeasuring 5500 square yards voluntarily relinquishing by them in favour of the slum dwellers.

The competent authority in exercise of its statutory power accordingly confirmed the notification only to the extent of 5500 square yards and thereafter, necessary developmental activities were undertaken by the Corporation by providing amenities to the slum dwellers.

The petitioners obviously with a view to get over the consent given by the original owner P.C. Seethamma raised untenable and unsustainable pleas by way of reply affidavit inter alia contending that Seethamma was not the owner as on the date when she gave consent inasmuch as the properties were subjected to

family partition as early as in the year 1970 and thereafter Seethamma ceased to be the owner of the said land admeasuring 5500 square yards. In support of their plea, family partition deed dated 15.12.1970 is made available for the perusal of the Court. It is an unstamped and unregistered document. Learned counsel for the petitioners fairly conceded that the document is an unstamped and unregistered partition deed. The Court cannot place any reliance upon such unstamped and unregistered partition deeds and the same cannot be received as a piece of evidence.

Be it as it may, the petitioners having issued notice under Section 80 of the CPC putting the Corporation on notice expressing their intention to file a civil suit have chosen to file the present writ petition with vague and indefinite allegations. No factual foundation as such is laid in the affidavit filed in support of the writ petition making out any case for grant of any compensation as such by the Corporation. That an attempt has been made to improve the case in the reply affidavit inter alia contending that Seethamma never gave her consent and she could not have given her consent because as on that date she was not the owner of the land. Such disputed questions of facts cannot be resolved in a proceeding under Article 226 of the Constitution of India.

Suffice it to observe that the record produced by the Municipal Corporation pursuant to rule nisi issued by this Court contains the memorandum of settlement arrived at by and between late P.C. Seethamma and the representatives of the slum dwellers wherein late Seethamma agreed to part away land admeasuring 5500 square yards freely in favour of the slum dwellers in lieu of the slum dwellers relinquishing their claim for the remaining land. The notification issued under Section 3(2) of the Act also refers the factum of the compromise and joint petitions filed on 21st and 22nd March, 1983 expressing their willingness to part with 5500 square yards under actual occupation of the slum dwellers free of cost. The notification further reveals that the claimants have relinquished their claim over the said piece of land and undertaken not to claim any compensation. Seethamma admittedly died in the year 1999. During her lifetime, she never raised any objection and any plea of fraud or misrepresentation in the matter of entering into compromise. That apart, the petitioners have chosen to file the present writ petition after a period of more than ten years after publication of the notification under Section 3(2) of the Act issued under the provisions of the Act. Even in the

writ petition also, the validity of the notification issued under Section 3(2) of the Act is not challenged. The petitioners presented themselves to be innocent and sought for payment of compensation as if the Corporation refused to pay the compensation without any reason or justification. The facts speak for themselves. The petitioners are obviously indulging in speculative litigation. They have not approached this Court with clean hands.

For the aforesaid reasons, I find no merit in this writ petition and the same shall accordingly stand dismissed with costs.

.....ASSISTANT REGISTRAR

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// TRUE COPY //

SECTION OFFICER

One fair copy to the Hon'ble Sri Justice B. Sudershan Reddy
lordship's kind perusal).

(for his

TO

- 1 Municipal Corporation of Hyderabad Rep. by its
Commissioner/Special Officer, Tank Bund, Hyderabad.
- 2 Dist. Collector (Land Acquisition), Municipal Corporation of
Hyderabad, Hyderabad.
- 3 The Director, Urban Community Development, Municipal
Corporation of Hyderabad. Hyderabad.
- 4 2 CCs to the learned Government Pleader for Revenue, High Court Buildir
Court of Andhra Pradesh, Hyderabad (OUT).
- 5 2 CD copies.